IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4723 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAMSHADBANU S MALIK

Versus

REGISTRAR, HIGH COURT OF GUJ.

Appearance:

MR SK BUKHARI for Petitioner No. 1

MR PARESH UPADHYAY for Respondents No. 1-2

Ms. Manisha Lavkumar AGP for Respondents No. 3.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 11/12/2001

ORAL JUDGEMENT

The petitioner in this petition had sought for mandatory directions directing the respondent No.1 to give employment to the petitioner as per the policy laid down by the State Government for giving appointment to the dependents of the deceased Government servants on compassionate grounds. By way of interim relief, the petitioner had prayed for a direction to the respondent No.1 to give the petitioner an appointment on the post of

either Clerk or Section Writer on adhoc basis.

2. Mr. Bukhari, ld. advocate appearing for the petitioner had stated before me that the petitioner's husband, namely Sahirhusen Malik had joined in the services on the post of Section Writer with the respondent No.2 in the year 1967, and that he was shifted to the cadre of Clerk and since then he is working as a Clerk under the Office of the respondent No.2. That the petitioner's husband has expired on 16.6.1989 due to heart-attack.

3. The learned advocate has further submitted before me that since the petitioner's husband has expired during his tenure of service and since as per the Government policy for giving appointment to the dependents of deceased Government service, the petitioner being dependent of the deceased had submitted an application in the month of July 1989 requesting the respondents to give the petitioner appointment on the post of Section Writer or any other suitable post. The petitioner had submitted all necessary papers along with the said application. The petitioner's application was however rejected by the respondent No.2, vide his letter dated 13th March 1990 on the ground that the petitioner has not passed the SSC examination with English subject and as a result of which the High Court of Gujara has not accepted the application of the petitioner.

4. Being aggrieved by the said communication dated 13th March 1990 the petitioner filed the present petition and made the prayers as set out in Para 13 of the petition. While issuing the notice on the respondents, this Court has passed an order granting ad-interim relief in favour of the petitioner on 17.8.1990 to the following effect :

"By way of ad-interim relief it is directed that respondents shall consider the case of the petitioner for appointment on compassionate ground without insisting that she should have passed S.S.C. Examination with English as one subject. It may be noted that the rules governing the appointments of clerks as notified in the Government resolution dated December 26, 1957 do not require that S.S.C. Examination should have been passed with English as one of the subject. Respondent no.1 shall take decision on the aforesaid basis latest by Sept. 10, 1990. The decision shall be placed on record of the

> petition on Sept. 11, 1990. It is clarified that it will be open to the respondents to take decision on merits, but the claim of the petitioner shall not be denied on the ground that she has not passed S.S.C. Examination with English as one of the subjects. Stand over to September 11, 1990."

The petition was thereafter admitted on 27.8.1991 and ad-interim relief granted earlier was ordered to continue.

5. Mr. Bukhari, the ld. advocate for the petitioner has further drawn my attention that during the pendency of this petition, an order was passed by the respondent NO.2 giving appointment to the petitioner as Junior Clerk on probation period of six months from the date of resuming duties and subject to the result of the present petition. It was further made clear in the said order that the appointment of the petitioner was purely temporary and the services shall be liable to be terminated at any time without any notice or without assigning any reasons thereof and during probation period. The order of appointment further makes it clear that the appointment of the petitioner would not confer any right or claim for any seniority or for any appointment on the establishment of this Court. The appointment was also subject to the existing rules that may be in force from time to time and subject to the result of the present petition filed by the petitioner in this Court. This order of appointment produced by Mr. Bukhari is placed on record.

6. Since the petitioner is in service right from 1991 and since the appointment was given to the petitioner pursuant to the order passed by this Court, there is no reason to disturb the said position after expiry of a period of more than 10 years. Even otherwise, the petitioner was appointed as a Clerk and for appointment of Clerk, or Section Writer, rules for recruitment of Class-III and Class-IV under the office of the respondents envisage that no person having a qualification lower than SSC or other examination recognised as equal to SSC with English subject be appointed. Hence, for the purpose of appointment of the petitioner, the requirement of passing the SSC examination with English subject was not required. While granting interim relief, this Court has also directed the respondents to consider the case of the petitioner for appointment on compassionate ground without insisting

that she should have passed the SSC examination with English as one subject. Since the appointment which was given to the petitioner was considered irrespective of the fact whether she has passed SSC examination with or without English subject, this Court is of the view that the respondent No.2 was not justified in rejecting the application of the petitioner. The petition is, therefore, allowed. Rule made absolute with no order as to costs.

rmr. [K.A. Puj, J.]